(4)

Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

Criminal Appeal No. 2158 /2000

046

24/8/2000
R.M. Bajpai
Advocate

APPELLANT (IN JAIL) : Mangal Ram S/o Massuram
aged about 35 years,
R/o Bandhuguda, Distt. Navrangpur
ORRISA.

Vs.

RESPONDENT : The State of M.P. through
P.S. Dhamtari.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

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HIGH COURT OF CHHATTISGARH : AT BILASPUR.

Criminal Appeal No.2158/2000.

Mangal Ram, S/o Massuram ... Appellant

Vs.

The State of M.P. through
P.S. Dhamtari. ... Respondent.

* * * * * *

J u d g m e n t
(10-04-2001)

By. Hon.Shri R.S.Garg,J. :

The appellant being aggrieved by the judgment dated 28.6.2000, passed in Special Case No.79/99, by the learned Special Judge (N.D.P.S.), Raipur, convicting the appellant for an offence punishable under Section 20(b)(i) read with Section 8 of N.D.P.S.Act, sentencing him to undergo R.I. for 2 years and pay fine of Rs.2,000/-, in default of payment of fine to under-go further R.I. for 2 months, has filed this appeal.

2). The prosecution case in brief is that on 3.10.99, the Asst.Sub-Inspector of police station Dhamtari, namely Ashok Dwivedi(P.W.7), at about 3.30 a.m. received a news from the informer that in the luxury bus coming from Jagdalpur, two persons were importing ganja.

After recording the report and complying with the mandatory provisions contained under Section 42 of the N.D.P.S.Act, the said Asst.Sub-Inspector proceeded towards the spot. Ashok Dwivedi(P.W.7) reached the spot and after seeing the on coming bus, he stopped the same, informed the driver and conductor that they were to take search of the vehicle. Finding the present appellant and another in suspicious activities, he served them a notice under Section 50 of the Act and after obtaining their consent, took search of the air-bags. From the possession of the present appellant 5kg. ganja was recovered. The contra-bands were weighed and thereafter, the search party along with the accused came back to the police station. First information report was registered and thereafter the information was sent to the immediate official superior in accordance with Section 52/57 of the Act. After receiving the positive report about the contra-bands, on conclusion of the investigation the challan was filed. As the accused abjured the guilt, he was put to trial. After recording the evidence and hearing the parties, the learned trial Court convicted and sentenced the accused as referred to above.

3). Shri Mishra, learned counsel for the appellant submits that as the mandatory pro-visions contained under Section 42 and 50 of the Act were not complied with, the appellant

deserves to be acquitted.

4). Contending contrary to the said submissions, Shri P.Bharat, learned Panel Lawyer submits that from the statements of the witnesses and the documents exhibited during the course of the trial, it would clearly appear that immediately after receipt of the information from the informer, the said information was recorded in writing and a copy of the said information was sent to the superior officer. He also submits that from the documents it would appear that notice Ex.P/6 was given to the accused before his search was taken. According to him, the mandatory provisions were complied with and there is no scope for any interference in this appeal.

5). From the statements of P.W.7 Ashok Dwivedi, it clearly appears that after receiving the information, he recorded the same at Ex.P/4. It also appears from his statements that immediately after recording the information, he sent a copy of the same to the immediate superior officer. From his statements, it also appears that before conducting search of the present appellant, notice Ex.P/6 under Section 50 of the Act was given to the accused and his consent under Ex.P/7 was taken. It also appears that before search was conducted, P.W.7 Ashok Dwivedi had offered himself for his own search. From his statements, it also appears that two samples of 100 gms. each were drawn on the spot and the

contrabands and samples were properly packed and sealed. From his statements, it also appears that immediately after the accused was brought to the police station, first information report was registered and the information was again sent to the higher officer.

6). After going through the statements of Ashok Dwivedi (P.W.7), I am unable to hold that his statements suffer with any defect; in fact on the material aspects, he is supported by the other witnesses and the documentary evidence which is available on the record. As the statements of P.W.7 Ashok Dwivedi are reliable and there is no reason to doubt the correctness of the said statements, no defect can be found with the findings recorded by the learned trial Court. Confirming the findings recorded by the learned trial Court, I hold that the accused committed an offence punishable under Section 20(b)(i) read with Section 8 of the N.D.P.S.Act.

7). At this stage, learned counsel for the appellant submits that the sentence awarded to the appellant deserves to be reduced to the period already undergone by the appellant. He submits that the appellant is in jail since 4-10-99 and by now, he has undergone 1½ year and must have also earned remission of more than two months, therefore, sentence be reduced to the period already undergone.

8). Shri P.Bharat,learned Panel Lawyer submits that as the question of sentence is within the discretion of the Court, he has no comments to make.

9). Taking into consideration the quantity of ganja and the arguments of the learned counsel for the appellant, so also that there is no evidence on the record to show that the appellant is a trader in the contrabands or is a drug- pedlar, I consider present to be a fit case for reducing the jail sentence to the period already undergone.

10). The appeal on the question of jail sentence is allowed. The substabtive jail sentence is reduced to the period already undergone; but, however, the fine amount and the default sentences are maintained.

Sd/-
R.S. Garg
Judge
10-4-2001.

/subbu/.

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